

In re) Fair Hearing No. 15,408
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Appeal of)

The petitioner appeals a decision by the Department of Social Welfare establishing an overpayment of Food Stamps based on an administrative error made by the Department. The issue is whether the Department can assess a 10 percent recoupment amount when the recipient is not at fault for the overpayment. The following facts are not in dispute.

1. On April 12, 1998, the Department notified the petitioner that due to her inadvertent error she had been overpaid a total of \$195 in Food Stamps from August through December, 1997. The Department now concedes that the overpayment occurred through its own administrative error.

2. The petitioner is not currently receiving Food Stamps, and it does not appear likely that the Department will take further action to recover this amount in the immediate future. The Department points out, however, that future changes in federal policy might well require states to pursue outstanding overpayments through tax refund intercepts and other legal collection means. And if the petitioner is found eligible for Food Stamps in the future the Department would recoup this overpayment by reducing the

petitioner's ongoing monthly Food Stamps by 10 percent.

ORDER

The decision of the Department is affirmed.

REASONS

Under the Food Stamp regulations, the Department is required to "establish a claim against any household that has received more Food Stamp benefits than it is entitled to receive." F.S.M. § 273.18(a). "A claim shall be handled as an administrative error claim if the over issuance was caused by State agency action or failure to take action..." F.S.M. § 273.18(a)(2). A state agency is required to "take action to establish a claim against any household that received an over issuance due to an...administrative error if . . . [a] state agency incorrectly computed the household's income or deductions, or otherwise assigned an incorrect allotment . . ." so long as not more than twelve months have elapsed between the month the over issuance occurred and the month the state agency discovered the error. F.S.M. § 273.18(b)(2)(ii). If administrative error occurred, the size of the Department's claim must equal the difference between what the household should have received and what the household was actually allotted. F.S.M. § 273.18(c)(1)(ii).

State agencies are required to "initiate collection actions" against all households who were overpaid due to administrative error unless it is a non-fraud claim of less than \$35. F.S.M. § 273.18(d)(1)(i)(A). If the client is continuing to receive Food Stamps, collection is accomplished through recoupment of the greater of 10 percent of the household's ongoing monthly allotment or \$10 per month. F.S.M. § 273.18(g)(4)(ii).¹ Presently, there is no provision in the regulations requiring the Department to pursue recoupment in cases in which the overpaid household is no longer receiving Food Stamps.

Inasmuch as the above regulations require that the Department, in spite of its own administrative error, initiate collection of any amounts for which the petitioner was not qualified, the Department's decision in this matter must be affirmed. 3 V.S.A. § 3091(d) and Fair Hearing Rule No. 17.

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¹Until recent changes in Federal law, overpayments caused by the Department's administrative error could not be recouped involuntarily from a household's ongoing Food Stamps.